

**Before the  
FEDERAL COMMUNICATIONS COMMISSION  
Washington, DC 20554**

In the Matter of

RM-11303

Petition for Rulemaking of Fibertech  
Networks, LLC

**VERIZON'S OPPOSITION TO FIBERTECH'S PETITION FOR RULEMAKING**

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# **VERIZON'S<sup>1</sup> OPPOSITION TO FIBERTECH'S PETITION FOR RULEMAKING**

## **Introduction and Summary**

Fibertech's petition asks this Commission to implement a series of new specific federal rules governing pole and conduit access. However, Fibertech's petition fails to identify competitive inequities under the Commission's current rules warranting a regulatory solution. Fibertech's petition for rulemaking requests additional regulation to "fix" a system that is not broken, and the Commission should reject it out of hand.

The current regulatory regime governing pole and conduit access traces its roots to the *Local Competition Order*<sup>2</sup> implementing the Telecommunications Act of 1996. In that Order, the Commission recognized that a number of individualized factors determine whether additional facilities can be attached to any particular pole or conduit within the bounds of safety, reliability, and general engineering principles. *See Local Competition Order* ¶¶ 1143-46. The Commission therefore rejected the notion of implementing specific federal rules governing pole and conduit access, and adopted instead general guidelines to ensure reasonable and safe access to poles and conduit. As the Commission explained, "there are simply too many variables to permit any other approach with respect to access to the millions of utility poles and untold miles of conduit in the nation." *Id.* ¶ 1143.

Fibertech's proposed rules are precisely the type of specific rules that the Commission has rejected. Fibertech attempts to justify its proposed departure from the Commission's long-standing deregulatory approach to attachments by claiming that its specific rules are necessary to prevent discrimination and anticompetitive behavior in the provision of pole and conduit access.

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<sup>1</sup> The Verizon telephone companies ("Verizon") are the companies affiliated with Verizon Communications Inc. that are listed in Attachment A.

<sup>2</sup> 11 FCC Rcd 15499 (1996) ("*Local Competition Order*").

Yet, Fibertech fails to demonstrate that pole and conduit owners are denying or restricting access in a discriminatory manner or causing any competitive harm under the current rules. Moreover, many of the specific rules proposed by Fibertech contradict existing rules and would threaten pole and conduit owners' ability to ensure the safety of all attachers' facilities on their poles and conduits and impede the efficient and fair administration of pole and conduit space.

Each of Fibertech's proposed rules is discussed in turn below.

**I. Fibertech's Proposed Regulation of Boxing and Extension Arms**

Fibertech first asks the Commission to require pole owners to permit "boxing" and the use of extension arms if "the pole owner has previously allowed use of the technique." *See Fibertech Petition* at 13.<sup>3</sup> Fibertech's proposed rule, however, fails to account for the varied engineering and safety issues inherent in pole attachments. That boxing or extension arms could be safely employed on one pole in a pole owner's network does not mean that boxing or extension arms can be safely used on a different pole in another location. Rather, the safety and feasibility of using boxing or extension arms must be evaluated on a case-by-case basis, taking account of numerous factors, such as the location of the pole and the placement of prior attachments. *See Harrington Decl.* ¶ 9-16.<sup>4</sup>

For example, Verizon does not use boxing as a general construction technique because boxing greatly complicates pole replacements, removals, and the cable transfers required when performing pole replacements. *See id.* ¶ 9. If cables are attached on only one side of a pole, the placement of a new pole beside the existing pole, the attachment of cables to the new pole, and

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<sup>3</sup> Petition for Rulemaking of Fibertech Networks, RM 11303 (filed Dec. 7, 2005) ("*Fibertech Petition*").

<sup>4</sup> Declaration of Gloria Harrington (Jan. 30, 2006) (appended hereto as Attachment B) ("*Harrington Decl.*").

the removal of the old pole can be performed efficiently and safely. However, if the original pole is boxed, it is a much more complicated and costly matter to safely transfer cables from opposite sides of the existing pole onto a new pole. *See id.* ¶ 9. Similar concerns apply to extension arms. Extension arms, or “brackets,” make it more difficult for a technician to access and work on the attachment immediately above and below the bracket. For this reason, Verizon does not permit extension arms to be used merely to increase the capacity on the pole. *See id.* ¶¶ 13-14.

Nevertheless, Verizon “boxes” its own poles and uses extension arms in certain limited circumstances. For example, Verizon permits boxing on some poles, depending on a case-by-case analysis of the placement of the pole itself and on which side of the pole the existing facilities are located. *See id.* ¶ 10. Similarly, Verizon permits extension arms or brackets in those limited cases when it is necessary to extend the cable away from the pole in order to obtain sufficient clearance from a building or tree or to improve cable alignment. Again, this is necessarily a case-by-case analysis, depending on the location of the pole and other nearby structures or objects. *See id.* ¶ 14.

Verizon applies the same standards for boxing and extension arms to other attachers as it applies to itself. For example, Verizon permits attachers to box a Verizon pole in those situations where Verizon has used, or would use, the boxing method to attach its own facilities to that particular pole. In fact, Verizon has permitted Fibertech to box Verizon’s poles in a number of instances. *See id.* ¶ 11. Similarly, in those limited locations where Verizon has found it necessary to install extension arms to obtain the necessary clearance for its own facilities or to compensate for a pole that is out of alignment, it has allowed attachers to install their own extension arms as well. *See id.* ¶ 14.

Fibertech claims that restrictions on boxing and extension arms, *even though evenly applied*, nevertheless harm competition because competitive service providers do not have the option of using “overlapping” as a low-cost way of attaching new facilities when there is no available pole space. *See Fibertech Petition* at 13. To the contrary, Verizon permits an attacher to overlap another attacher’s facilities, as long as overlapping in a particular case complies with safety, reliability, and general engineering principles and the other attacher has consented to the overlapping. *See Harrington Decl.* ¶ 16. Fibertech simply has not demonstrated that pole owners’ current practices regarding boxing and extension arms cause competitive harm, and additional federal regulation of boxing and extension arms is not warranted.

## **II. Fibertech’s Proposed Rules Imposing Deadlines for Surveys and Make-Ready Work**

Fibertech asks the Commission to establish a series of new rules concerning the timing of surveys and make-ready work. Fibertech’s proposed rules would shorten existing time frames for surveys and responses to license applications; implement new time frames for make-ready work; require pole and conduit owners to permit contractors hired by others to perform surveys on the owners’ behalf; and permit a contractor hired by one attacher to perform work on all attachments, including those owned by other attachers or the pole or conduit owner. Fibertech attempts to justify its proposed regulations by raising general, unsupported allegations that owners “often” delay competitors’ facilities deployment by delaying surveys and make-ready work. *See Fibertech Petition* at 16. To the contrary, Verizon responds to license applications and completes make-ready work for pole and conduit attachments in a timely and non-discriminatory manner, in compliance with the Commission’s existing guidelines. *See Local Competition Order* ¶ 1224. Indeed, Verizon most often completes make-ready work for competitors’ pole and conduit attachments *more* quickly than it does for its own attachments.

*See Harrington Decl.* ¶¶ 6-7, 27-28. Fibertech’s generalized and unsupported allegations of “delay” simply do not justify the rules that it seeks.

Moreover, the specific rules proposed by Fibertech are inconsistent with the Commission’s prior orders and would impair the rights of other attachers. For example, Fibertech would reduce from 45 to 30 days the time permitted for a pole or conduit owner to complete a survey and respond to a potential attacher’s license application. The Commission’s current 45-day time frame for surveys and application responses is based on the Commission’s balancing of attachers’ need for timely access to poles and conduit against owners’ need to conduct surveys to ensure that new facilities can be installed safely. *See Local Competition Order* ¶ 1224; *Order on Reconsideration* ¶¶ 117-119.<sup>5</sup> Fibertech provides no explanation as to why the Commission’s prior conclusion was incorrect, or why the current 45 day interval causes competitive harm. Instead, Fibertech summarily claims that pole and conduit owners “often” fail to satisfy the current 45 day time frame. *See Fibertech Petition* at 16. Even if some pole and conduit owners cause delay by failing to abide by the current 45-day time frame, shortening the time frame would not provide a remedy.

Fibertech also proposes a new regulatory time frame, requiring that all make-ready work must be completed within 45 days. Fibertech’s proposed rule ignores existing rules designed to protect other attachers. Make-ready work that must be completed to prepare for new attachments to poles or conduits may affect existing attachments. In fact, it may not even be possible for a pole owner to start its make-ready work until other attachers have rearranged their existing attachments. And, as the Commission has recognized, parties with preexisting attachments to a pole or conduit must have “sufficient time to evaluate the impact of or opportunities made

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<sup>5</sup> 14 FCC Rcd 18049 (1999) (“*Order on Reconsideration*”)

possible by the proposed modifications on their interests and plan accordingly.” *Local Competition Order* ¶¶ 1207, 1209. Accordingly, absent a private agreement to the contrary, pole and conduit owners must provide 60 days’ notice to all attachers before making any modifications to the pole or conduit. *Id.* This notification requirement does not disproportionately delay competitors’ attachments, as the same notification period applies when an owner plans to modify poles or conduit for its own benefit. Indeed, it is the rule proposed by Fibertech – not the current rule – that would cause competitive harm, as Fibertech’s proposal would deny other competitors with attachments adequate notice of modifications that may affect the competitors’ facilities.

Finally, Fibertech proposes a “single crew” rule that would require pole and conduit owners and attachers to permit contractors hired by another attacher to perform surveys and make-ready work for *all* attached facilities. Pursuant to the Commission’s orders, Verizon permits attachers to hire qualified contractors to conduct surveys on the *attacher’s* behalf and to perform work on the *attacher’s* facilities. *See Local Competition Order* ¶ 1182. However, the Commission’s orders do not require pole or conduit owners to permit an attacher’s contractors to perform surveys or make-ready work on the owner’s behalf. The Commission’s Cable Service Bureau has expressly considered, and rejected, such a requirement. *See Cavalier Order* ¶ 18.<sup>6</sup> Accordingly, contractors hired by attachers may not conduct surveys on Verizon’s behalf or perform make-ready work on Verizon’s facilities. Other attachers may have similar practices prohibiting work by a third party’s contractors. Fibertech’s proposed rules would override the Commission’s prior orders and eliminate owners’ and attachers’ ability to control the work performed on their own facilities.

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<sup>6</sup> 15 FCC Rcd 9563 (2000) (“*Cavalier Order*”).



### **III. Fibertech's Proposed Rules Regarding Drop Lines**

Fibertech's proposed rules would bar a pole owner from requiring an attacher to obtain a license prior to attaching drop lines to the owner's poles. Verizon requires advance licensing for all attachments, including drop lines, to ensure that all applicants' requests are considered in the order received. For example, licensing ensures that attachers do not install drop lines in a pole space already licensed to another attacher. If a licensed attacher attempting to install facilities finds that another party has already installed a drop wire or other facilities in its licensed space, the licensed attacher must wait for the unlicensed party to remove them, causing delay and additional work. *See Harrington Decl.* ¶¶ 19-20.

Similarly, licensing ensures that pole attachments, including drop lines, do not exceed the maximum permissible load. Absent prior licensing procedures, an unlicensed attacher may unknowingly attach a drop wire to a pole that has already been licensed for its maximum capacity. As other attachers install their facilities in accordance with their previously obtained licenses, the pole will become overloaded. *See id.*, ¶ 21. Again, the unlicensed attachment would create additional work and inconvenience for all parties, as a higher-capacity pole would have to be installed and all attachments would have to be removed from the old pole and reattached to the new pole. Licensing ensures an orderly process for pole attachment work and thereby promotes efficiency and safety for all parties.

Nevertheless, Fibertech seeks a rule abolishing licensing requirements for drop lines, claiming that such licensing is discriminatory and causes undue delay. Contrary to Fibertech's suggestion, (*see Fibertech Petition* at 21), Verizon requires *all* attachers – including cable television companies, competitive LECs, and any other attachers – to obtain licenses prior to attaching drop lines, for the very reasons discussed above. *See Harrington Decl.* ¶ 18.

Moreover, Verizon evaluates license applications in a timely manner so as not to unnecessarily delay attachers' deployment of facilities. *See Harrington Decl.* ¶ 6. In many areas Verizon provides an expedited licensing procedure for pole attachments, which can further reduce the time for an attacher to obtain the necessary license for drop lines. *See id.* ¶¶ 22-23. Indeed, prior licensing *reduces* the risk of delay by reducing the likelihood that corrective work will be required to remedy improper or unsafe attachments. Prior licensing for drop lines is not a barrier to competitors' deployment of their facilities, and Fibertech's attempt to prohibit this essential procedure is not warranted.

#### **IV. Fibertech's Proposed Regulation of Conduit Record Searches and Manhole Surveys**

Fibertech also proposes a series of new regulations governing the conduit record searches and manhole surveys that conduit owners perform in reviewing applications for conduit access. Fibertech attempts to justify increased regulation with general allegations that conduit owners' record searches and manhole surveys cause competitors undue delay and expense. For example, Fibertech would require conduit owners to permit unfettered access to their conduit records, so that potential attachers can conduct their own record searches rather than wait for the conduit owner's search. Verizon, however, provides conduit applicants timely access to Verizon's conduit records. *See Harrington Decl.* ¶¶ 25-26. Verizon does not permit an applicant to conduct its own search of Verizon's records, or to accompany a Verizon employee during the conduit records search, as Verizon's original maps, plats, and other conduit records contain confidential and proprietary information. As the Commission has recognized, conduit owners are permitted reasonable procedures to protect confidential or proprietary information on maps, plats, and other conduit records before allowing competitors to inspect and copy them. *See Local Competition Order* ¶ 1223. Instead, Verizon will conduct a conduit record search on

request, will redact the confidential and proprietary information from the relevant documents, and will then permit the applicant to inspect or copy the records. *See Harrington Decl.* ¶ 26. It is Verizon's practice to locate, redact, and provide access to conduit records within five days or less after receiving a records request. *See id.* Fibertech's generalized claims of delay do not warrant stripping conduit owners of their ability to protect proprietary and confidential information on conduit records.

Fibertech also requests a federal rule granting conduit attachers the right to observe conduit owners' manhole surveys. Fibertech alleges that for fourteen out of the hundreds of manholes that Verizon has surveyed for Fibertech, Verizon's survey allegedly was mistaken and delayed some of Fibertech's installations.<sup>7</sup> Fibertech relies on these allegations to argue that the Commission should adopt a federal rule granting potential conduit attachers the right to observe all conduit owners' manhole surveys, to ensure the accuracy of the surveys. Verizon, however, already permits attachers to accompany Verizon's surveyors on manhole surveys. *See Harrington Decl.* ¶ 30; *see also Stockdale Decl.* ¶ 26.<sup>8</sup> Fibertech was free to accompany Verizon's surveyors to the fourteen manholes about which it complains, as well as to the other manholes Verizon has surveyed for Fibertech. No federal regulation is necessary for Fibertech to observe manhole surveys.

In addition, Fibertech's proposed rules would cap the fee that conduit owners may charge for manhole surveys at \$200 per manhole. The Commission, however, has recognized that conduit owners are entitled to seek reimbursement "on an actual cost basis" for the costs of

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<sup>7</sup> Fibertech's petition does not provide sufficient information about the purportedly mistaken surveys for Verizon to locate any records substantiating or disputing Fibertech's allegations. *Harrington Decl.* ¶ 29.

<sup>8</sup> Declaration of Charles Stockdale (Dec. 7, 2005), attached to *Fibertech Petition* ("*Stockdale Decl.*").

records searches and manhole surveys to determine if conduit space is available. *Order on Reconsideration* ¶ 107. The actual costs of manhole surveys can vary, such that a flat \$200 fee may not permit the conduit owner to recover its actual costs. For example, circumstances such as night work, overtime, manhole pumping, and hazardous waste disposal may require costs well in excess of \$200.

Fibertech nevertheless seeks a single, regulated rate of \$200 for all manhole surveys to address what it claims are excessive survey charges by conduit owners. However, in Fibertech's example involving Verizon, Verizon's charge for the manhole surveys was less than Fibertech's proposed regulatory cap of \$200 per manhole. *See Fibertech Petition* at 27. Fibertech therefore appears not to object to the actual costs of the surveys, but rather to the provisions in its current agreements with Verizon whereby Verizon assesses an estimated charge in advance of manhole and pole surveys, with adjustments made to the final bill to reflect the actual cost of the survey and the make-ready work. It is Fibertech's choice, however, to operate under these types of contract provisions. Verizon offers an alternative arrangement for pole attachments, whereby Verizon charges set fees or "unit costs" for each task associated with pole surveys and make-ready work, to minimize processing time and aid attachers' budgeting. Although Verizon does not offer unit cost provisions for conduit attachments, it has made unit cost provisions for pole attachments available to Fibertech. Fibertech, however, has for the most part chosen to continue operating under its existing agreements. *See Harrington Decl.* ¶¶ 41-42. Fibertech's dissatisfaction is with its own choice of contract provisions -- not the current regulatory scheme.

#### **V. Fibertech's Proposed Rules Requiring Documentation for Fees**

Fibertech's proposed rules would require pole and conduit owners to provide detailed invoices documenting the cost of surveys and make-ready work. Fibertech, however, has failed

to show that pole and conduit owners' current bills are insufficient. Indeed, Verizon's invoices for surveys and make-ready work already provide substantial details, such as the description of the work performed, the location of the poles or conduits involved, the number of the license application associated with the work, and itemized charges for labor hours, engineering hours, materials, and administrative fees. *See id.* ¶ 46. Nor does Fibertech explain why a federal rulemaking, rather than private arrangements between the parties, is necessary to ensure adequate bills. Fibertech's proposed billing rule is a solution in search of a problem, and federal rulemaking is not warranted.

**VI. Fibertech's Proposed Rules Prohibiting Conduit Owners' Inspection of Attachers' Work**

Fibertech's proposed rules would prohibit conduit owners from requiring that its own employees "supervise" attachers' work in manholes. *See Fibertech Petition* at 31. As an initial matter, Verizon's conduit work inspectors do not "supervise" the work of attachers' technicians or contractors. Conduit work presents a number of safety concerns, both for the work crew itself and for the facilities located in the conduit. Verizon requires its inspectors to be available to ensure that attachers perform their work in a safe manner and without damaging other attachers' facilities. *See id.* ¶¶ 31-34.

Fibertech seeks a federal rule banning inspection requirements, however, claiming that such requirements could potentially delay installation of facilities. In support, Fibertech poses hypothetical scenarios where requiring an inspector's presence could cause delay, but provides no evidence that conduit owners' inspectors have actually interfered with an attacher's timely installation of facilities. Fibertech's Saratoga Springs example involving Verizon's inspectors is not to the contrary. As Fibertech itself notes, Verizon's inspection requirement did not prevent Fibertech from completing its installation according to plan. *See Fibertech Petition* at 31.

Fibertech has not demonstrated that prohibiting inspection requirements is necessary to protect competitive facilities deployment, and a rulemaking is not warranted.

## **VII. Fibertech's Proposed Rules Regarding Access to Building-Entry Conduit**

Fibertech's final proposed rule would require incumbent local exchange carriers with facilities in building-entry conduit to permit other carriers to install additional facilities in the conduit, even when there is no innerduct to separate the facilities or when all innerduct is occupied. As an initial matter, in many cases it is the building or property owner, rather than Verizon or another incumbent LEC, that owns and controls access to building-entry conduit.

In those cases where Verizon owns the building-entry conduit, however, it treats requests for conduit access in the same manner as any other request for a conduit attachment: evaluating each request on a case-by-case basis to ensure that additional facilities can be installed safely and in compliance with general engineering principles. Attachments in building-entry conduit are often complicated by the fact that working cables are often installed in conduits that were constructed prior to the now-common practice of using innerduct to subdivide the space. As a result, until recently, there was no feasible way of placing cable or innerduct into the same conduit with working cable without risking damage. Similarly, if innerduct was present but fully occupied, there was no way feasible way of pulling cable through the interstices without a serious risk of puncturing or otherwise damaging the working cable, the new cable, or both. Accordingly, requests for access to occupied building-entry conduits often could not be accommodated without risking damage to facilities and hazardous conditions. *See Harrington Decl.* ¶¶ 36-39. And as the Commission has recognized, conduit owners properly deny access if access cannot be granted consistent with safety, reliability, and general engineering principles. *See Local Competition Order* ¶¶ 1151-52.

More recently, however, a new product known as MaxCell<sup>®</sup> has been developed to facilitate the safe installation of multiple facilities in conduit. Although MaxCell<sup>®</sup> cannot be safely used in all cases, in many situations, installing MaxCell<sup>®</sup> enables the safe addition of new facilities into building-entry conduit containing working cable, or even into the interstices between occupied innerduct. Verizon considers requests for access to building-entry conduit on a case-by-case basis, and permits attachers to place facilities in its building-entry conduit when MaxCell<sup>®</sup> can be used to ensure safe installation. Fibertech's proposed rule, which would have required building-entry conduit owners to grant access without regard to existing installations, is particularly ill-advised and unnecessary in light of the product developments that will expand competitors' safe access to building-entry conduit.

#### **CONCLUSION**

For the foregoing reasons, the Commission should deny Fibertech's petition for a rulemaking regarding Fibertech's proposed new federal rules regulating pole and conduit access.

Respectfully submitted,



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Date: January 30, 2006

THE VERIZON TELEPHONE COMPANIES

The Verizon telephone companies participating in this filing are the local exchange carriers affiliated with Verizon Communications Inc.:

Contel of the South, Inc. d/b/a Verizon Mid-States  
GTE Southwest Incorporated d/b/a Verizon Southwest  
Verizon California Inc.  
Verizon Delaware Inc.  
Verizon Florida Inc.  
Verizon Maryland Inc.  
Verizon New England Inc.  
Verizon New Jersey Inc.  
Verizon New York Inc.  
Verizon North Inc.  
Verizon Northwest Inc.  
Verizon Pennsylvania Inc.  
Verizon South Inc.  
Verizon Virginia Inc.  
Verizon Washington, DC Inc.  
Verizon West Coast Inc.  
Verizon West Virginia Inc.



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	)	
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**DECLARATION OF GLORIA HARRINGTON**

1. My name is Gloria Harrington. My business address is 4050 E. Cotton Center Boulevard, Room 600, Phoenix, Arizona 85040. I am Manager – Engineering National Staff – Joint Use and Licensing for Verizon. My current responsibilities include leading the Verizon National Support Staff responsible for the development of methods, procedures and policies pertaining to Joint Use and Licensing for poles and conduit across the Verizon footprint.

2. I have been employed by Verizon for the past 27 years as a Line Manager for Installation, as a Manager for Training and Development and since 1987 as a Manager in Engineering. I was responsible for establishing the License Administration Group Center in Boston where all requests for access to poles/ducts/conduits and rights of way within New England are processed. I received my Bachelor of Arts degree from the State University of New York at Oswego in 1974.

**I. Purpose of Declaration**

3. The purpose of my declaration is to show that competitors are able to obtain access to Verizon's poles and conduit in a timely and non-discriminatory manner and that there is no reason for the Commission to promulgate any new rules for pole

attachments or conduit. As Verizon's illustrative performance reports demonstrate, Verizon is completing pole attachment and conduit applications within 45 days. In addition, Verizon is completing make ready work for third parties more quickly than it completes make ready work for itself.

4. Verizon has also taken steps to increase the availability of its poles and conduit and to minimize make ready work. For example, Verizon has authorized the use of the MaxCell<sup>®</sup> product to place cable in conduit that has working cables, but no available innerducts. In addition, Verizon has, on a case by case basis, allowed Fibertech to box Verizon poles and will consider, in appropriate situations, Fibertech's requests to overlash third party facilities and to attach with less than 12 inches of clearance between Fibertech's facilities and a third party's facilities.

5. Verizon has provided detailed information to Fibertech to support Verizon's bills for costs in excess of the original estimates. In addition, Verizon has offered Fibertech new licensing agreements that including unit pricing for pole attachment application surveys and make ready work, which would largely eliminate any billing or credits for the difference between actual costs and estimates. With the exception of pole attachment agreements in New York and one pole attachment agreement in Massachusetts, Fibertech has not agreed to sign new pole attachment agreements replacing its existing agreement. Nor has Fibertech paid its outstanding balances on many of Verizon's bills.

**Pole Attachment Applications and Make Ready Intervals**

6. Contrary to Mr. Stockdale's unsupported assertions, Verizon does complete surveys on pole applications in a timely manner. *See* Declaration of Charles

Stockdale ¶ 4 (“Stockdale Decl.”). Mr. Stockdale only discusses Fibertech’s activities in three Verizon states. In two of those Verizon states, Massachusetts and Rhode Island, Verizon completed and responded to all pole applications within 45 days during the first 11 months of last year (data for December 2005 is not yet available). *See* Exhibit 1. In the third Verizon state mentioned by Mr. Stockdale, New York, Verizon has not collected performance data throughout the state.

7. Verizon completes make ready work on poles in a timely and nondiscriminatory manner. During all of the first 11 months of last year, the average number of days to complete pole make ready work in Massachusetts and Rhode Island for CATV/CLECs was less than the average number of days to complete Verizon’s own pole make ready work. *See* Exhibit 1.

8. Of course, even if statewide performance measures showed that some targets had not been met, those measures wouldn’t necessarily be indicative of a problem. With limited activity in a single month in a particular state, the overall monthly performance results can vary significantly because of what happened on one or two applications or make ready jobs. In these situations, it may be necessary to examine the facts more closely in order to evaluate Verizon’s performance.

**Boxing and Extension Arms.**

9. Mr. Stockdale asserts that Verizon has largely “prohibited the use of boxing” on its poles. Boxing simply means attaching cables to both sides of the pole rather than a single side of the pole. Verizon does not use boxing as a general construction practice because it complicates pole replacements, removals, and the cable transfers required when performing pole replacements. For example, if a pole has

attachments only on the road side and that pole needs to be replaced, the new pole could be set adjacent to the damaged pole, on the field side of the existing cables. This way, the cables can be readily transferred from the damaged pole to the new pole. But if the damaged pole were boxed and the new pole was set on the field side of the existing pole, the transfer of cables from the damaged boxed pole to the new pole would be more complicated. While the cables on the field side of the damaged boxed pole can be readily transferred to the new pole, the cables on the road side of the damaged boxed pole cannot be readily transferred. There are principally two options in this situation. First, the portion of the damaged pole just above the existing road side cable attachment could be cut off in order to lift that cable over the damaged pole and attach it to the new pole. This process would have to be repeated from top to bottom until each road side cable was transferred to the new pole. Second, each road side cable could be cut and then respliced on the field side of the damaged pole in order to attach to the road side of the new pole. Again, this process would have to be repeated for each attachment in order from top to bottom. Because the facilities have been boxed on the old pole, it is a more complex process to re-position the cables to the new pole and typically requires a pole of greater height in order to transfer all the attachments from the old pole – field side and road side – to just the road side of the new pole. There is a third option, but it is rarely used. Under this option, a new pole is hoisted up from below, through the existing gap in the boxed cables. However, setting a pole in this manner is a tedious, complex job that risks damaging the cables.

10. Verizon does allow attachers, such as Fibertech, to box a pole in certain situations where Verizon has used or could use the boxing method to attach its own

facilities to that pole. The determination of whether to allow a pole to be boxed is made on a case by case basis, recognizing that such attachments need to be in compliance with relevant safety codes. For example, when a pole is replaced and the new pole is set on the road side of the existing pole and attached cables, it may be necessary to attach the existing facilities to the field side of the new pole. When any new cables are placed thereafter, the attachment is usually made on the road side of the pole. The result is a boxed pole with cables attached to both sides of the pole. Generally speaking, Verizon would allow Fibertech to attach its facilities on the road side of a pole where Verizon's cables are attached to the field side in order to facilitate Fibertech's attachment even though the result would be a boxed pole. This allowance does not necessarily mean that no make ready work would be required on that pole. Even when a pole is boxed, make ready work may be necessary to maintain required separation between the facilities attached to that pole.

11. Verizon has allowed Fibertech to box Verizon's poles in a number of instances. For example, in Agawam, MA, Verizon allowed Fibertech to box 14 of its poles. In addition, Verizon has allowed Fibertech to box one pole in Northampton, MA, and one pole in Easthampton, MA.

12. Mr. Stockdale also asserts that Verizon does not allow Fibertech to use extension arms for its attachments. Stockdale Decl. ¶ 16. According to Mr. Stockdale, "[e]xtension arms, or brackets, are devices that extend horizontally from a pole to support communications lines away from the pole face [and] thereby permit the required 12-inch separation between communications lines to be achieved diagonally when insufficient pole space exists to allow it to be achieved vertically." Stockdale Decl. ¶ 6

13. Mr. Stockdale has not correctly described the applications for which Verizon allows the use of extension arms. While extension arms are not a standard practice for pole attachments, they can be used to extend a cable away from the pole in order to obtain sufficient clearance from a building or tree or to improve cable alignment.

14. Installation of a bracket or other attachment facility less than 12 inches from another attachment makes it more difficult for a technician to access and work on the attachment immediately above or below the bracket. It is for this reason that Verizon limits its use of brackets to those situations where the cable needs to be extended from a pole in order to obtain sufficient clearance from a building, tree or other obstruction between poles, or to compensate for a pole that is out of alignment. In any event, Verizon would allow Fibertech to place Fibertech's own bracket in any situation where Verizon itself would place its own bracket.

15. If Fibertech wishes to attach to poles with less than the 12 inch separation between its facilities and another attacher's facilities, Fibertech can request written consent from that attacher for the reduction in the minimum clearance requirement between its facilities and that attacher's facilities. Fibertech must provide written consent from that attacher before the reduction of the 12 inch minimum separation between Fibertech's facilities and that attacher's facilities will be considered by Verizon. To the best of my knowledge, Fibertech has not provided Verizon with copies of the necessary consents to attach its facilities with less than the 12 inch minimum clearance in connection with any of its pole attachment applications.

16. Mr. Stockdale also implies that only incumbent communications companies can deploy new cables by overlashing them to existing support strand.

Stockdale Decl. ¶ 16. Verizon's pole attachment practices and procedures contain no such restrictions on overlashing third party attachments. Verizon does not allow anyone to overlash Verizon's facilities because it would limit Verizon's flexibility and require coordination with the overlasher whenever Verizon needed to work on its facilities. However, Fibertech can overlash another attacher's facilities if it obtains that other attacher's written consent and there are no engineering or safety issues associated with overlashing on the particular poles. The possibility of overlashing a third party's facilities is typically discussed during the pole application survey. To the best of my knowledge, Fibertech has not provided Verizon with copies of the necessary consents to overlash its facilities to another attacher's facilities in connection with any of its pole attachment applications.

#### **Unlicensed Drop Lines**

17. Verizon manages drop wire attachments in exactly the same manner as any other pole attachments. All pole attachments, even drop wires, are subject to the same application and licensing process. Drop wires must satisfy minimum clearance requirements and must be attached safely and without overloading the pole. Allowing attachments to poles without first securing a license undermines the pole owners' ability to manage access to poles in a non-discriminatory manner and on a first come, first served basis. Pole owners have a responsibility to manage access for all potential attachers. The licensing process insures all applicants' requests are considered in the order received and that make ready costs are properly attributed to the cost causer.

18. Mr. Stockdale asserts that cable television companies "have been permitted to attach drop lines . . . to utility poles . . . without first obtaining a license,

when necessary to satisfy a specific request for service.” Stockdale Decl. ¶ 20. Verizon does not allow cable television companies to attach drop wires without first obtaining a license.

19. Mr. Stockdale’s suggestion that Fibertech should be allowed to attach drop wires without prior licensing is not practical. Allowing attachers, such as Fibertech, to attach their drop wires without prior licensing would undermine the licensing process and inevitably lead to additional work for attachers and potentially hazardous conditions.

20. For example, if a Fibertech technician were to attach a drop wire to a Verizon pole without prior licensing, he wouldn’t know whether another attacher had already applied for a license on that pole in that same space. When the other attacher dispatched its technician to attach its facilities to that pole, he would find Fibertech’s facilities already attached in the space that had been licensed for his attachment. Conceivably, another attacher may even have already paid for make ready work to create the space needed for its attachment. He would then have to appeal to the pole owner to have Fibertech remove its facilities and return after arrangements had been made for the removal of Fibertech’s facilities. Additional work, expense and time delays would have been caused directly by Fibertech’s failure to obtain a license prior to attaching its facilities.

21. Moreover, even if Fibertech did not attach its facilities in the space licensed to another attacher, the pole might have already been licensed for the maximum safe load. As the other licensed attachers attach their facilities, the pole will become overloaded as a result of Fibertech’s unlicensed attachment. Fibertech will then need to remove its facilities and later reinstall them once a larger pole has been set.



22. Verizon does offer an automatic licensing procedure in New England states that many cable television companies use to expedite their attachment of drop lines for customer service requests. For attachers participating in this process, Verizon will generate a license application and forward it to the attacher whenever Verizon plans to place a new pole or receives notice from a power company that it plans to place a new pole. The participating attacher then has 45 days to sign and return the application to Verizon. Upon receipt of the participating attacher's signed application, Verizon will authorize the license and return it to the participating attacher for its records. Pole rental charges begin on the first day of the month following the date the license is authorized by Verizon.

23. This automatic licensing procedure offers several benefits for participating attachers. First, it reduces the time to obtain a pole license. Second, it eliminates the expense of pole surveys. And third, it reduces the potential for unauthorized attachments.

24. This automatic licensing procedure is available to all attachers in New England states, including Fibertech. To the best of my knowledge, Fibertech has not asked to participate in this procedure.

#### **Conduit Record Searches and Surveys**

25. Mr. Stockdale asserts that Fibertech is delayed in obtaining access to conduit because it "must depend upon utilities to search records and survey manholes to accurately determine the availability of conduit." Stockdale Decl. ¶ 22. Verizon's performance data demonstrate that Verizon is providing access to conduit in a timely manner.

26. First, Verizon is providing access to its conduit records in a timely manner. Before Verizon can allow a third party to review its conduit records, Verizon must redact proprietary and confidential information from those records, such as the location of competitors' facilities and customer specific information related to Verizon's customers. Verizon's target for redacting these records and providing access to them is five days. In Massachusetts and Rhode Island, Verizon provided all requested conduit records in five days or less during the first 11 months of last year (data for December 2005 is not yet available). *See Exhibit 2.*

27. Second, Verizon is processing conduit applications in a timely manner. In Massachusetts and Rhode Island, Verizon completed and responded to all conduit applications within 45 days during the first 11 months of last year. *See Exhibit 2.*

28. Third, Verizon is completing make ready work on conduit in a timely and nondiscriminatory manner. During all of the first 11 months of last year, the average number of days to complete conduit make ready work in Massachusetts and Rhode Island for CATV/CLECs was less than the average number of days to complete Verizon's own conduit make ready work. *See Exhibit 2.*

29. Mr. Stockdale asserts that "on at least 14 occasions Verizon incorrectly reported, based on physical examinations of manholes, the availability of conduit." Stockdale Decl. ¶ 23. Mr. Stockdale has not provided enough information regarding these manholes for Verizon to respond. Nonetheless, these fourteen manholes are only a small fraction of the [hundreds] of manholes that Verizon surveyed at Fibertech's request.

30. In addition, Verizon provides notice to the attacher of the date and time when Verizon will conduct the conduit survey for the attacher's application. The attacher can send its technician to accompany Verizon's technician on the survey at the scheduled date and time, but Verizon will not reschedule the survey at the attacher's request. Fibertech's technicians have accompanied Verizon's technicians on many surveys.

**Verizon Conduit Work Inspectors**

31. Mr. Stockdale asserts that Verizon requires that its "inspectors" supervise the work performed by Fibertech and other attachers in Verizon's manholes. Stockdale Decl. ¶¶ 30-32. Verizon's Conduit Work Inspectors do not supervise the work of Fibertech's technicians or contractors. Rather, they are assigned to monitor Fibertech's technicians and contractors to make sure they perform their work in a safe manner without damaging anyone's facilities.

32. Manholes are frequently located in roads. Before any attacher's technicians or contractors can open and enter the manhole, they must secure the area and divert traffic a safe distance away from the manhole. In addition, the manhole must be purged, tested for dangerous gases, ventilated with fresh air and pumped of water before anyone can enter. Verizon's inspectors are responsible for monitoring the attacher's crew to insure they follow all proper safety steps. If the attacher's crew fails to take all necessary safety precautions, Verizon's inspectors will shut down their work and direct them to leave the manhole.

33. Working in a manhole also poses a risk to Verizon's facilities and the facilities of other attachers. Verizon's inspectors attempt to monitor the attacher's work crews as they work on their facilities, but field conditions may not make it possible to do

so. For example, there may not be enough room in the manhole for Verizon's inspector to monitor the attacher's crew.

34. If Verizon's inspector observes an attacher's crew safely open and enter the manhole, that inspector may leave the site to inspect the opening of another manhole. On the other hand, if Verizon's inspector is not satisfied with the manner in which the attacher's crew is working in Verizon's manhole, Verizon's inspector may stay at the site until the work is completed and the crew has left. In either case, the attacher is only billed for the inspector's time while he is on site observing the attacher's crew.

**Access to Building Entry Conduit**

35. Mr. Stockdale claims that "ILECs often populate building-entry conduit with cable but no innerduct" and do not allow Fibertech to place its cable in that same conduit. Stockdale Decl. ¶ 38. In many cases, Verizon's cable may have been in placed in building entry conduit many years ago, even before the current practice of placing cable in innerduct. In addition, the building entry conduit may be owned by the building owner or property owner, and may have been built only to accommodate a single provider's communications facilities. In these cases, Fibertech will need to make arrangements with the property or building owner for additional conduit.

36. Where Verizon owns the building entry conduit, Verizon administers access to that conduit in a non-discriminatory manner and on a first come, first served basis. Until recently, there was no feasible way to place cable or innerduct in a conduit with a working cable without risking damage to that cable. However, a new product called MaxCell® was recently developed specifically for these situations and became a Verizon-approved product in February 2004.

37. MaxCell® is a lightweight fabric, 1/12<sup>th</sup> the weight of a standard rigid innerduct. The fabric is engineered with a low coefficient of friction, which makes it extremely easy to place in conduit. MaxCell® is water repellant and chemically resistant to ground chemicals and petroleum products. If the conduit can be rodded, the MaxCell® product can provide a path to place fiber or small copper cables where cables already exist. See <http://www.maxcellinnerduct.com/Products/Product%20Main.htm>. Only Verizon employees and Verizon approved contractors can place MaxCell® in building entry conduits that already have working Verizon cables. Verizon will place MaxCell® in building entry conduits provided there is sufficient space in the conduit, the conduit can be rodded and Fibertech has obtained all necessary authorizations from the property owners or building owners.

38. Mr. Stockdale also claims that “ILECs regularly reject Fibertech requests for permission to pull their fiber cable through the interstices among the innerducts.” Stockdale Decl. ¶ 38. This is another situation where MaxCell® can be used by Fibertech. Although the MaxCell® product cannot be used in all situations, in many cases it can be used to place Fibertech’s cable in the interstices between existing innerducts.

39. In the absence of the MaxCell® product, there is no feasible way to place cable or innerduct in a conduit with a working cable without risking damage to that cable. The activities required to pull bare cable or innerduct through a conduit that already has working cable can very easily puncture or damage the working cable or the new cable being pulled. The MaxCell® product is the only product currently available to protect the working cable in these situations.

**Verizon Billing**

40. Mr. Stockdale objects to the provisions in its current agreements that provide for Fibertech to be billed estimated charges in advance of application surveys and make ready work and later billed or credited based on actual costs. Stockdale Decl. ¶¶ 4, 25. However, it is Fibertech that has chosen to continue operating under these pole attachment contract provisions. If Fibertech does not wish to be billed for estimated costs and later billed or credited for actual costs, Fibertech can execute new pole attachment agreements that include unit pricing provisions for Verizon's New England states. Fibertech's pole attachment agreement in New York already has provisions for unit pricing.

41. Approximately five years ago, Verizon New England conducted extensive workshops with the CLEC/CATV licensees to obtain input from them for use in revising and improving Verizon's pole attachment agreements and procedures. To reduce the time for processing requests and to eliminate the need for developing an estimate and then reconciling the estimate with actual costs to issue a final bill for both the survey and make-ready phase, Verizon developed a unit cost for each survey and make-ready work task and included the unit cost sheets in its standard pole attachment agreements. The use of unit costs was supported by most attachers because it not only reduced processing time but it enabled licensees to better anticipate and budget for these costs.

42. In 2004, Verizon first offered Fibertech new pole attachment agreements for New England states with unit pricing provisions. To the best of my knowledge, of the nine pole attachment agreements Fibertech has executed with Verizon for New England states, only one contains unit pricing provisions for pole survey and make ready work.

43. Mr. Stockdale also asserts that Verizon's invoices for the difference between actual costs and estimated costs are unreasonably large. He also claims that Verizon does not provide enough documentation or explanation to support these invoices. Stockdale Decl. ¶ 28.

44. First, in many cases, Verizon's actual costs exceeded the original estimates because Fibertech changed the scope of work or requested that the work be done on an expedited basis. Since Fibertech caused Verizon to incur these costs, Fibertech is obligated to reimburse Verizon for these costs in accordance with the terms of the parties' agreements.

45. Second, the amounts that appear on individual invoices for the additional costs Verizon incurred on Fibertech's applications are relatively small. During the last three years, the average unpaid Fibertech invoice for actual costs in excess of the original estimated costs was less than \$2,000.

46. Third, these invoices include sufficient detail for Fibertech to validate the costs. For example, Bill Number 617LAASD70305 dated 03/24/2005 includes a description of the work ("for VZ to place inner duct between MH1 – MH1A [on a street in Massachusetts] on 2/8/05 in association with conduit license application C-2004-0115"), the number of labor hours, the number of engineering hours, the material cost, the credit for Fibertech's advance payment of the original estimate, and the administration fee. Despite providing this level of detail, Fibertech continues to withhold payment on this invoice and others totaling well over the amount cited by Mr. Stockdale.

47. Mr. Stockdale also cites an example of a job where the estimated costs billed to Fibertech were much higher than the actual costs. Stockdale Decl. ¶¶ 25-26. In

this instance, conditions were ideal for completing the survey work in much less time than estimated. The conduit at issue had recently been surveyed for another conduit application. The technician assigned to the survey for Fibertech's application had also surveyed the same conduit for the prior application. In addition, all of the manholes were dry and didn't need to be pumped. As a result, the technician was able to reverify quickly that the conduit was still available.

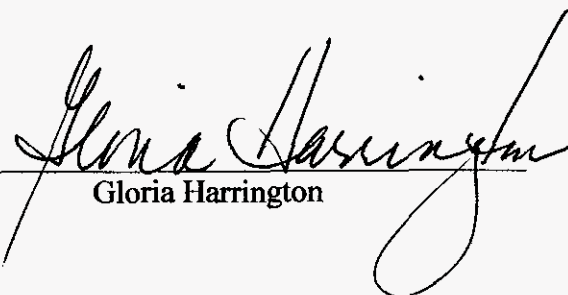
### **III. Conclusion**

48. Mr. Stockdale's assertions are unsupported, erroneous and out of date. Verizon has made and continues to make pole attachments and conduit available to Fibertech and other competitors in a timely and nondiscriminatory manner.



I declare under penalty of perjury under the laws of the United States of America that the foregoing is true and correct.

Executed on January \_\_, 2006



Gloria Harrington

POLE ATTACHMENT PERFORMANCE  
2005 MASSACHUSETTS

	JAN	FEB	MAR	APRIL	MAY	JUNE	JULY	AUG	SEPT	OCT	NOV
Pole Application Responses											
% Responded within 45 days	100%	100%	100%	100%	100%	100%	100%	100%	100%	100%	100%
Number of Applications	56	84	83	71	75	89	94	78	54	103	34
Pole Make Ready											
VZ - Avg. Days	205	212	220	209	206	167	252	234	279	254	203
VZ - Number of Jobs	108	104	78	104	116	148	87	123	97	88	118
CLEC/CATV - Avg. Days	18	35	30	33	NA	53	8	8	75	87	14
CLEC/CATV - Number of Jobs	4	1	2	2	0	4	2	1	2	4	1

POLE ATTACHMENT PERFORMANCE  
2005 RHODE ISLAND

	JAN	FEB	MAR	APRIL	MAY	JUNE	JULY	AUG	SEPT	OCT	NOV
Pole Application Responses											
% Responded within 45 days	100%	100%	100%	100%	100%	100%	100%	100%	100%	100%	100%
Number of Applications	19	19	17	30	30	32	25	16	32	35	38
Pole Make Ready											
VZ - Avg. Days	90	79	106	136	123	121	119	118	102	55	55
VZ - Number of Jobs	72	54	63	79	98	96	91	84	70	72	59
CLEC/CATV - Avg. Days	83	58	59	42	36	47	33	39	18	44	54
CLEC/CATV - Number of Jobs	6	11	14	15	14	9	7	6	6	10	8

## CONDUIT PERFORMANCE 2005 MASSACHUSETTS

[illegible]

## CONDUIT PERFORMANCE 2005 RHODE ISLAND

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